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# In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 740

ACHILLES ABBAMONTE, PETITIONER

*v.*

UNITED STATES OF AMERICA

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT*

## BRIEF FOR THE UNITED STATES IN OPPOSITION

### OPINION BELOW

The opinion of the court of appeals (Pet. App. 13–22) is reported at 348 F. 2d 700.

### JURISDICTION

The judgment of the court of appeals was entered on July 16, 1965 (Pet. App. 23; R. 82a). Petitions for rehearing and for rehearing *en banc* were denied on September 15, 1965 (Pet. App. 24, 25; R. 86a–92a, 96a). On October 12, 1965, Mr. Justice Harlan extended the time for filing a petition for a writ of certiorari to and including November 13, 1965, and the



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petition was filed on that day. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

## QUESTION PRESENTED

Whether, after petitioner had caused repeated delays of his trial by changing attorneys, the trial court properly exercised its discretion in assigning as defense counsel petitioner's retained attorney, whom he had just discharged.

## STATEMENT

After a jury trial in the United States District Court for the Southern District of New York, petitioner was convicted on a one-count indictment charging a narcotics sale in violation of 21 U.S.C. 173 and 174 (R. 3a, 5a). He was sentenced as a third offender to imprisonment for 15 years (R. 3a–4a, 62a–63a, 66a, 68a–69a). On appeal, the conviction was affirmed (R. 4a, 70a–71a, 82a). The pertinent facts may be summarized as follows:

Petitioner was indicted on June 23, 1964 (R. 1a), and on the following day an attorney from the Legal Aid Society was assigned to represent him (R. 1a). On July 1, petitioner entered a plea of not guilty, bail was reduced to $30,000, and the case was adjourned to July 20 to permit the filing of motions (R. 1a). Petitioner then retained new counsel, on whose motion bail was reduced on July 10 to $20,000 (R. 2a). On July 21, that attorney (with whom petitioner had had a dispute (Pet. App. 14)) was relieved as petitioner's counsel, and the trial was adjourned until July 27 (R. 2a). The Legal Aid attorney was

reassigned to the case (Pet. App. 14–15), but was relieved on July 30 since petitioner had retained another attorney, Mr. Krieger, who filed a notice of appearance on August 5 (R. 2a).

The case was finally called for trial on August 10, 1964, at a time when petitioner was out of prison on bail (R. 6a, 66a). Petitioner requested another adjournment for the purpose of subpoenaing witnesses (R. 7a). When asked whether he needed additional time, attorney Krieger answered, "I personally don't. I am however deferential of my client's wishes and I wish the court to consider them. I pray the court to realize that my client knows infinitely more about the case than do I" (R. 8a). Noting that the indictment had been pending for about six weeks, that petitioner had been represented during this period by three different attorneys, and that petitioner could subpoena any witness to appear at a later date during the trial, the court denied the application for adjournment (R. 8a–9a). Petitioner then stated that Mr. Krieger could not be prepared to go to trial since he had not even talked about the case; Mr. Krieger stated that the two had had an extensive conversation and conference (R. 10a); and there ensued the colloquy (R. 10a–13a), set forth in the opinion below (Pet. App. 15–18), in which petitioner stated that he wanted a new attorney and the trial judge, over petitioner's protest, directed that Mr. Krieger remain as defense counsel and that the trial proceed.

## ARGUMENT

This case presents no issue of general importance. The only question involves the application of well settled principles to the particular circumstances—in the light of which, we submit, the decision below is clearly correct. The right of an accused to select his own counsel cannot be "insisted upon or manipulated so as to obstruct the orderly procedure in the courts or to interfere with the fair administration of justice." *United States* v. *Bentvena*, 319 F. 2d 916, 936 (C.A. 2), certiorari denied *sub nom. Ormento* v. *United States*, 375 U.S. 940. In view of petitioner's obdurate delaying tactics, the trial court properly exercised its discretion in assigning Mr. Krieger as defense counsel so as to forestall further unjustified delays. Cf. *Leino* v. *United States*, 338 F. 2d 154, 156 (C.A. 10); *Cleveland* v. *United States*, 322 F. 2d 401 (C.A.D.C.), certiorari denied, 375 U.S. 884.

Petitioner argues that rather than assign Mr. Krieger the court should have allowed petitioner to proceed *pro se*. But he gave no indication that he wanted so to proceed. What he really wanted was a further postponement of the trial date. And since petitioner's dismissal of Mr. Krieger was manifestly a mere delaying tactic, rather than an expression of *bona fide* dissatisfaction with his services, the court acted properly in directing Mr. Krieger to remain as assigned counsel. He was counsel of petitioner's choice and he was prepared to try the case. Mr. Krieger's statements showed that he and petitioner had held a conference regarding the case and that he

was ready for trial (R. 8a, 10a); his remark that "my client knows infinitely more about the case than do I" (R. 8a) was not an admission of unpreparedness but merely an argument in support of his client's request for a continuance.

## CONCLUSION

It is respectfully submitted that the petition for a writ of certiorari should be denied.

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DECEMBER 1965.

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*The Solicitor General having disqualified himself.